It is concluded, therefore, that stockholders have a right to have corporate debts paid as soon as practicable, in order that corporate profits may be distributed as dividends instead of being paid out as interest; and, further, that any diversion of profits agreed to be distributed as dividends is an unconstitutional impairment of the stockholder's contract, unless he consent to such diversion.

In the principal case some reliance is placed upon *Union Canal Co.* v. *Antillo*, 4 W. & S. 553. There a certificate of loan was issued in 1830 by a company, that there was due from it to Antillo, or her assigns, a certain sum, bearing interest at 6 per cent. per annum, payable quarterly on certain days, *the principal to be redeemable in the option of the company*, at any time after January 1st 1840; and further stating that it was issued under a resolution of the company, and that the holder would be entitled to convert the whole of said sum into shares of the capital stock of the company at any time previous to January 1st 1840.

It was decided that this created an annuity coupled with a power to redeem after January 1st 1840, the company alone having power after that time to determine when the loan shall be repaid, and that an action would not lie to compel payment of the principal against the will of the company, its affairs having terminated disastrously.

The *Antillo case* is distinguishable from the principal case. In the former the bonds were expressly redeemable at the option of the company. This option might be exercised, and a saving of interest effected for the stockholders at any time the company became able to pay its debts. Not so in the principal case. In it the bonds are irredeemable whether the company fail or flourish, and stockholders—whether the company is able to pay its debts or not—are always to have a portion of its surplus earnings dissipated in interest. They are, by the "deferred bond scheme," left unprotected in the very respect wherein their rights were fully guarded by the Antillo contract.

The company in the *Antillo case* contemplated a redemption at its option, and so also did the court, for it said in deciding the case: "thus, if the rate of interest be reduced, it would be to the benefit of the company to open a new loan and repay the amount borrowed; but if there should be no change in the value of money, then it was to be at their option to continue the contract on the same terms." This case is no authority for an irredeemable loan as against the company. The difference between the two contracts is clear, material and important.

ADELBERT HAMILTON

Chicago.

Supreme Court of Connecticut.

IN RE MARY HALL.

Under a statute providing that "the Superior Court may admit and cause to be sworn as attorneys such persons as are qualified therefor agreeably to the rules established by the judges of said court, and no other person than an attorney so admitted shall plead at the bar of any court of this state, except in his own cause," a woman who has complied with the rules as to examination, &c., and found qualified, may legally be admitted as an attorney.

THIS was an application by a woman for admission to the bar of Hartford county. After having completed the prescribed term

of study she passed the examination required by the rules of the bar, and was recommended by the bar of the county to the Superior Court for admission, subject to the opinion of the court upon the question whether as a woman she could legally be admitted. The Superior Court reserved the case for the advice of the Supreme Court.

J. Hooker and *T. McManus*, for applicant.

G. Collier, contra.

The opinion of the court was delivered by

PARK, C. J.—The statute with regard to the admission of attorneys by the court is the 29th section of chapter 3, title 4, of the General Statutes, and is in the following words: "The Superior Court may admit and cause to be sworn as attorneys such persons as are qualified therefor agreeably to the rules established by the judges of said court; and no other person than an attorney so admitted shall plead at the bar of any court of this state, except in his own cause."

It is not contended, in opposition to the application, that the language of this statute is not comprehensive enough to include women, but the claim is that at the time it was passed its application to women was not thought of, while the fact that women have never been admitted as attorneys, either by the English courts or by any of the courts of this country, had established a common-law disability, which could be removed only by a statute intended to have that effect.

It is hardly necessary to consider how far the fact that women have never pursued a particular profession or occupied a particular official position, to the pursuit or occupancy of which some governmental license or authority was necessary, constitutes a common-law disability for receiving such license or authority, because here the statute is ample for removing that disability if we can construe it as applying to women, so that we come back to the question whether we are by construction to limit the application of the statute to men alone, by reason of the fact that in its original enactment its application to women was not intended by the legislators that enacted it.

And upon this point we remark, in the first place, that an inquiry of this sort involves very serious difficulties. No one

would doubt that a statute passed at this time in the same words would be sufficient to authorize the admission of women to the bar, because it is now a common fact and presumably in the minds of legislators, that women in different parts of the country are and for some time have been following the profession of law. But if we hold that the construction of the statute is to be determined by the admitted fact that its application to women was not in the minds of the legislators when it was passed, where shall we draw the line? All progress in social matters is gradual. We pass, almost imperceptibly, from a state of public opinion that utterly condemns some course of action to one that strongly approves it. At what point in the history of this change shall we regard a statute, the construction of which is to be affected by it, as passed in contemplation of it? When the statute we are now considering was passed it probably never entered the mind of a single member of the legislature, that black men would ever be seeking for admission under it. Shall we now hold that it cannot apply to black men? We know of no distinction in respect to this rule between the case of a statute and that of a constitutional provision. When our state constitution was adopted in 1818, it was provided in it that every elector should be "elegible to any office in the state," except where otherwise provided in the constitution. It is clear that the convention that framed and probably all the people who voted to adopt that constitution, had no idea that black men would ever be electors, and contemplated only white men as within any possible application of the provision, for the same constitution provided that only white men should be electors. But now that black men are made electors will it do to say that they are not entitled to the full rights of electors in respect to holding office, because an application of the provision to them was never thought of when it was adopted? Events that gave rise to enactments may always be considered in construing them. This is little more than the familiar rule that in construing a statute we always inquire what particular mischief it was designed to remedy. Thus the Supreme Court of the United States has held that in construing the recent amendments of the Federal Constitution, although they are general in their terms, it is to be considered that they were passed with reference to the exigencies growing out of the emancipation of the slaves, and for the purpose of benefiting the blacks: *Slaughter House Cases*, 16 Wall. 67; *Strander* v. *West Virginia*, 100 U. S.

Rep. 306. But this statute was not passed for the purpose of benefiting men as distinguished from women. It grew out of no exigency caused by the relation of the sexes. Its object was wholly to secure the orderly trial of causes and the better administration of justice. Indeed the preamble to the first statute providing for the admission of attorneys, states its object to be "for the well ordering of proceedings and pleas at the bar."

The statute on this subject was not originally passed in its present form. The first act with regard to the admission of attorneys was that of 1708, which was as follows: "That no person, except in his own cause, shall be admitted to make any plea at the bar without being first approved by the court before whom the plea is to be made, nor until he shall take in the said court the following oath," &c.: Col. Records, 1706 to 1716, p. 48. This act seems to have contemplated an approval by the court in each particular case in which an attorney appeared before it. The first act with regard to the general admission of attorneys appears in the revision of 1750, and is as follows: "That the county courts of the respective counties in this colony shall appoint, and they are hereby empowered to approve, nominate and appoint attorneys in their respective counties as there shall be occasion, to plead at the bar; * * * and that no person, except in his own case, shall make any plea at the bar in any court but such as are allowed and qualified attorneys as aforesaid." Thus the statute stood until the revision of 1821, when for the first time it took essentially its present form. Up to this time the word "person" had been used in this statute only in the clause that "no person" should be allowed to practice before the courts except where formally admitted by the court, a use of the word which of course could not be regarded as limited to the male sex, as women would undoubtedly have been held to be included in the term. The language of the statute as now adopted was as follows: "The county courts may make such rules and regulations as to them shall seem proper, relative to the admission and practice of attorneys; and may approve of, admit and cause to be sworn as attorneys, such persons as are qualified therefor, agreeably to the rules established; * * * and no person not thus admitted, except in his own cause, shall be admitted or allowed to plead at the bar of any court." The statute in this form passed through the compilations of 1835 and 1838, the revision of 1849 and the compilation of 1854, and appears, with a slight modification, in the

revision of 1866. The county courts had now been abolished, and the power to admit attorneys, as well as to make rules on the subject, had been given to the Superior Court; the expression "such persons" being preserved, and the provision that "no person" not thus admitted should be allowed to plead, being omitted.

The statute finally took its present form in the revision of 1875. It retains the provision that the Superior Court may make rules for the admission of attorneys, and provides that the court "may admit and cause to be sworn as attorneys *such persons* as are qualified therefor agreeably to the rules established," and restores the provision, dropped in the revision of 1866, that "no person other than an attorney so admitted shall plead at the bar of any court in this state, except in his own cause."

These changes, though not such as to change the meaning of the statute at any point of importance to the present question, are yet not wholly without importance. The adoption by the legislature of a revision of the statutes becomes, both in law and in fact, a reenactment of the whole body of statutes; and though, in determining the meaning of a statute, we are not to regard it as then enacted for the first time, especially if there be no change in its phraseology, yet, where there is such a change, it follows that the attention of the revisers had been particularly directed to that statute, as of course also that of the legislature, and that with the changes made it expresses the present intent of both. Thus, in this case, it is clear that the revisers gave particular thought to the phraseology of the statute we are considering, and put it in a form that seemed to them best with reference to the present state of things, and decided to leave the words "such persons" to stand, with full knowledge that they were sufficient to include women, and that women were already following the profession of law in different parts of the country. The legislators must be presumed to have acted with the same consideration and knowledge. It would have been perfectly easy, if either had thought best, to insert some words of limitation or exclusion, but it was not done. Not only so, but a clause omitted in the revision of 1866 was restored, providing that no "person" not regularly admitted should act as an attorney, a term which necessarily included women, and the insertion of which made it necessary, if the word "persons" as used in the first part of the statute should be held not to include women, to give two

entirely different meanings to the same word where occurring twice in the same statute and with regard to the same subject-matter.

The object of a revision of the statutes is, that there may be such changes made in them as the changes in political and social matters may demand, and where no changes are made in a statute it is to be presumed that the legislature is satisfied with it in its present form. And where some changes are made in a particular statute and other parts of it are left unchanged, there is the more reason for the inference, from this evidence, that the matter of changing the statute was especially considered, that the parts unchanged express the legislative will of to day, rather than that of perhaps a hundred years ago, when it was originally enacted.

But this statute, in the revision of 1875, is placed immediately after another with regard to the appointment of commissioners of the Superior Court, the necessary construction of which, we think, throws light upon the construction of the statute in question. That act was passed in 1855, after women had begun, with general acceptance, to occupy a greatly enlarged field of industry, and some professional and even public positions; and it has been held, by the Superior Court, very properly we think, as applying to women, a woman having three years ago been appointed a commissioner under it. Its language is as follows: "The Superior Court in any county may appoint any number of persons in such county to be commissioners of the Superior Court, who, when sworn, may sign writs and subpœnas, take recognisances, administer oaths and take depositions and the acknowledgment of deeds, and shall hold office for two years from their appointment." Here the very language is used which is used in the statute with regard to attorneys. In one it is "any number of persons," in the other "such persons as are qualified." These two statutes are placed in immediate juxtaposition in the revision of 1875 and deal with kindred subjects, and it is reasonable to presume that the revisers and the legislature intended both to receive the same construction. It would seem strange to any common-sense observer that an entirely different meaning should be given to the same word in the two statutes, especially when in giving the narrower meaning to the word in the statute with regard to attorneys, we are compelled to give it a different meaning from that which the same word requires in the next line of the same statute.

We are not to forget that all statutes are to be construed, so far

as possible, in favor of equality of rights. All restrictions upon human liberty, all claims for special privileges, are to be regarded as having the presumption of law against them, and as standing upon their defence, and can be sustained, if at all by valid legislation, only by the clear expression or clear implication of the law.

We have some noteworthy illustrations of the recognition of women as eligible or appointable to office under statutes of which the language is merely general. Thus, women are appointed in all parts of the country as postmasters. The Act of Congress of 1825 was the first one conferring upon the postmaster-general the power of appointing postmasters, and it has remained essentially unchanged to the present time. The language of the act is that, "the postmaster-general shall establish post offices and appoint postmasters." Here women are not included except in the general term "postmasters," a term which seems to imply a male person; and no legislation from 1825 down to the present time authorizes the appointment of women, nor is there any reference in terms to women until the revision of 1874, which recognises the fact that women had already been appointed, in providing that "the bond of any married woman who may be appointed postmaster shall be binding on her and her sureties." Some of the higher grades of postmaster are appointed by the president, subject to confirmation by the senate, and such appointments and confirmations have repeatedly been made. The same may be said of pension agents. The acts of Congress on the subject have simply authorized "the president, by and with the advice and consent of the senate, to appoint all pension agents, who shall hold their offices for the term of four years, and shall give bond," &c. At the last session of Congress a married woman in Chicago was appointed, for a third term, pension agent for the state of Illinois, and the public papers stated that there was not a single vote against her confirmation in the senate. Public opinion is everywhere approving of such appointments. They promote the public interest, which is benefited by every legitimate use of individual ability, while mere justice, which is of interest to all, requires that all have the fullest opportunity for the exercise of their abilities. These cases are the more noteworthy as being cases of public offices, to which the incumbent is appointed for a term of years, upon a compensation provided by law, and in which he is required to give bond. If an attorney is to be regarded as an officer, it is in a lower sense.

We have had pressed upon us by the counsel opposed to the applicant, the decisions of the courts of Massachusetts, Wisconsin and Illinois, and of the United States Court of Claims, adverse to such an application. While not prepared to accede to all the general views expressed in those decisions, we do not think it necessary to go into a discussion of them, as we regard our statute, in view of all the considerations affecting its construction, as too clear to admit of any reasonable question as to the interpretation and effect which we ought to give it.

In this opinion CARPENTER and LOOMIS, JJ., concurred; PARDEE, J., dissented.

Although women have been admitted to the bar in several states under statutes somewhat similar to that of Connecticut, the foregoing is believed to be the only reported opinion in which such right to admission has been sustained, while there are at least four elaborate opinions in the reports denying such right. In the case of *In re Bradwell*, 55 Ill. 535, decided in 1869, the question arose under a section of the Revised Statutes of Illinois, providing as follows: "No person shall be permitted to practise as an attorney or counsellor at law * * * without having previously obtained a license for that purpose from some two of the justices of the Supreme Court. * * * No person shall be entitled to receive a license as aforesaid until he shall have obtained a certificate from the court of some county of his good moral character." Another section of the revised statutes provided that whenever any person was referred to in the statute by words importing the masculine gender, females as well as males should be deemed to be included, but that this rule should not apply when there was anything in the subject or context repugnant to such construction. The court held that women could not be admitted, LAWRENCE, J., who delivered the opinion, saying: "When the legislature gave to this court the power of granting licenses to practise law it was with not the slightest expectation that this privilege should be extended equally to men and women. Neither has there been any legislation since that period which would justify us in presuming a change in the legislative intent. * * * We do not deem ourselves at liberty to exercise our power in a mode never contemplated by the legislature and inconsistent with the usages of courts of the common law from the origin of the system to the present day. But it is not merely an immense innovation in our own usages as a court that we are asked to make. This step, if taken by us, would mean that in the opinion of this tribunal every civil office in this state may be filled by women; that it is in harmony with the spirit of our Constitution and laws that women should be made governors, judges and sheriffs. This we are not prepared to hold. In our opinion it is not the province of a court to attempt by giving a new interpretation to an ancient statute to introduce so important a change."

Mrs. Bradwell appealed to the Supreme Court of the United States, which decided that the refusal to admit her to the bar was not a violation of any provision of the United States Constitution: *Bradwell* v. *The State*, 16 Wall. 130.

In the case of *In re Lockwood*, 9 N. & H. 346, decided in 1873, Mrs. Lock-

wood, a married woman, who had been admitted to the bar in the courts of the District of Columbia, applied for admission as an attorney in the United States Court of Claims. The court (NOTT, J., delivering the opinion), held that married women were not entitled to admission at common law, and that in the absence of any statute or established precedents authorizing such admission, the court was without power to grant the application. Afterwards Mrs. Lockwood applied to the Supreme Court of the United States to be admitted to practise as an attorney, and her application was denied, the following being the entry on the record: "Upon the presentation of this application the chief justice said that notice of this application having been previously brought to his attention, he had been instructed by the court to announce the following decision upon it: By the uniform practice of the court, from its organization to the present time, and by the fair construction of its rules, none but men are admitted to practise before it as attorneys and counsellors. This is in accordance with immemorial usage in England and the law and practice in all the states until within a recent period, and the court does not feel called upon to make a change until such a change is required by statute or a more extended practice in the highest courts of the states." This case is unreported but is cited in the opinion in *Robinson's Case*, 131 Mass. 376, cited *infra*.

In *Goodell's Case*, 39 Wis. 232 (1875) the question arose under a statute providing as follows: "No person shall hereafter be admitted or licensed to practise as an attorney of any court of record in this state except in the manner hereinafter provided. To entitle any such person to practise as such attorney in the Circuit Courts of this state he shall be first licensed by order of one of the judges thereof made in open court, and no such order shall be made until the person applying for such license shall have first been examined in open court, * * * nor unless such person be a resident of this state, more than twenty-one years of age and of good moral character. * * * Any person licensed by order of the court * * * shall be entitled to practise as attorney. By another statute it was provided "every word importing the masculine gender only may extend and be applied to females as well as males." Under these statutes a motion was made for the admission of an unmarried woman to the bar. The motion was denied, RYAN, C. J., delivering the opinion, and holding that the terms of the former statute applied to males only. With regard to the operation of the statute relating to the construction of words importing the masculine gender, the court said: "The argument for the motion is simply this, that the application of this permissive rule of construction to a provision applicable in terms to males only has effect, without other sign of legislative intent to admit females to the bar, from which the common law has excluded them ever since courts have administered the common law. This is sufficiently startling, but the argument cannot stop there. Its logic goes far beyond the bar. The same peremptory rule of construction would reach all, or nearly all, the functions of the state government, would obliterate almost all distinctions of sex in our statutory *corpus juris*, and make females eligible to almost all offices under our statutes, municipal and state, executive, legislative and judicial, except so far as the Constitution may interpose a virile qualification. * * * There is no sign nor symptom in our statute law of any legislative imagination of such a radical change in the economy of the state government. There are many the other way; an irresistible presumption that the legislature never contemplated such confusion of functions between the sexes. The application of

the permissive rule of construction here would not be in aid of the legislative intention but in open defiance of it. We cannot stultify the court by holding that the legislature intended to bring about *per ambages* a sweeping revolution of social order by adopting a very innocent rule of statutory construction." In the course of this opinion the court intimate that since the Constitution vested in the courts the judicial power of the state, the privilege of admission to the bar was one exclusively within the discretion of the courts independent of and superior to legislative control, and this intimation was renewed in the matter of the subsequent application of Miss Goodell (48 Wis. 693) in which, however, the court, "in deference to the wishes of a co-ordinate branch of the government," admitted the applicant under a statute passed after their former decision, and providing that no person should be denied admission to the bar on account of sex.

In *Lelia J. Robinson's Case*, 131 Mass. 376 (1881), the application was made under a statute containing the following provision: "A citizen of this state or an alien who has made the primary declaration of his intention to become a citizen of the United States, and who is an inhabitant of this state, of the age of twenty-one years, and of good moral character, may, on the recommendation of an attorney, petition the Supreme Judicial or Supreme Court to be examined for admission as an attorney, whereupon the court shall assign a time and place for the examination, and if satisfied with his acquirements and qualifications he shall be admitted." Another statute laid down certain rules for the construction of statutes which were to be observed, "unless such construction would be inconsistent with the manifest intent of the legislature or repugnant to the context of the same statute, and among these rules was one that "words importing the masculine gender may be applied to females." The court (GRAY, C. J., delivering the opinion), after an exhaustive review of the question, denied the application, saying: "The intention of the legislature in enacting a particular statute is not to be ascertained by interpreting the statute by itself alone and according to the mere literal meaning of its words. Every statute must be construed in connection with the whole system of which it forms a part, and in the light of the common law and of previous statutes on the same subject. And the legislature is not to be lightly presumed to have intended to reverse the policy of its predecessors or to introduce a fundamental change in long-established principles of law."

Whatever may be the current of judicial opinion, there can be no question but that the tendency of modern legislation is strongly in favor of allowing women the privilege of admission to the bar. It is worthy of note that each one of the decisions above referred to was followed by a statute granting to women the privilege which the court had denied (see Rev. Stat. Illinois, chap. 13, sect. 1; Act of Congress Feb. 15th 1879, 20th stat. 292; Rev. Stat. Wisconsin, sect. 2586; Massachusetts Statutes of 1882, c. 139), and it seems probable that women will soon be admitted to the bar throughout the entire country. Whether any considerable number will avail themselves of the privilege, and if they do, what will be the effect upon the administration of justice, are questions which can only be determined by future experience.

F. P. P.